

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**M.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Manchester, CT, Employer**

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**Docket No. 07-300  
Issued: August 21, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 9, 2006 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated April 27 and October 27, 2006 reducing his compensation to zero, for the reason that he failed to cooperate with vocational rehabilitation efforts. Pursuant to C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merit issue of the case.

**ISSUE**

The issue is whether the Office properly reduced appellant's monetary compensation to zero for failure to cooperate with vocational rehabilitation efforts.

**FACTUAL HISTORY**

On August 4, 1983 appellant, then a 29-year-old letter carrier, filed a traumatic injury claim alleging that on August 1, 1983 he twisted his right foot when he stepped in a ditch crossing the lawn. The Office accepted appellant's claim for right foot sprain and congenital pes planus.

By letter dated November 21, 2005, the Office referred appellant to a vocational rehabilitation counselor. In a report dated March 6, 2006, the counselor noted that she had tried to contact appellant at his address in Connecticut on several occasions. On December 2, 2005 she sent a letter of introduction and requested a meeting. On December 16, 2005 appellant called her telephone number and the name on the answering machine was Sharon Montero. The counselor left a message for appellant to call as quickly as possible. On January 9, 2006 the counselor attempted again to reach appellant, but she spoke to a relative who stated that appellant was not in at the time but would return shortly. The counselor verified the contact information and left a message for appellant to call. On February 16, 2006 the counselor sent appellant another letter requesting that he contact her before February 28, 2006. No response was received.

By letter sent to appellant's Connecticut address dated March 22, 2006, the Office informed him that it had been advised that he had impeded the rehabilitation efforts of his vocational rehabilitation counselor. The Office noted that appellant's counselor had sent him letters on December 2, 2005 and February 16, 2006 and attempted to contact him by telephone on December 16, 2005 and January 7, 2006.<sup>1</sup> However, appellant had not responded to the attempts at contact. The Office informed him that, pursuant to section 10.519 of Title 20 of the Code of Federal Regulations,<sup>2</sup> if an individual fails to participate in the essential preparatory efforts for vocational rehabilitation, in the absence of evidence to the contrary, it is presumed that the vocational rehabilitation effort would have resulted in no loss of wage-earning capacity and compensation will be reduced to zero. The Office noted that, if appellant subsequently complies with vocational rehabilitation efforts compensation will be reinstated, but that he would not be paid for his period of noncompliance. The Office allowed appellant 30 days from the date of the letter to respond, at which point it indicated that his benefits would be terminated. Appellant did not respond.

By decision dated April 27, 2006, the Office reduced appellant's compensation benefits to zero for refusal to cooperate with vocational rehabilitation. The Office sent a copy of this decision to appellant's Connecticut address.

On May 28, 2006 appellant requested an oral hearing. By separate letter dated May 28, 2006, he indicated that the notification with regard to the proposed termination was sent to the wrong address as he resided in Columbia, South Carolina and the letter was sent to Bridgeport, Connecticut where he temporarily resided from September to November 2005. By letter dated August 10, 2006, appellant withdrew his request for an oral hearing and instead requested reconsideration.

By letter dated August 31, 2006, the employing establishment contested appellant's argument that he had moved and did not receive the letter informing him of the consequences of failing to cooperate with vocational rehabilitation. The employing establishment noted that appellant had not cooperated with prior vocational rehabilitation efforts. The employing

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<sup>1</sup> The Board notes that the date January 7, 2006 appears to be a typographical error as the vocational rehabilitation counselor indicated in her report that she attempted to contact appellant by telephone on January 9, 2006.

<sup>2</sup> 20 C.F.R. § 10.519.

establishment also noted that appellant received the decision which was addressed to the same address as the notice of proposed reduction letter. The employing establishment noted that the vocational counselor spoke with a family member on the telephone, who indicated that appellant would return shortly. Finally, the Office noted that none of the correspondence sent to the Connecticut address was returned as undeliverable.

By decision dated October 27, 2006, the Office reviewed the case on the merits but determined that it properly reduced appellant's compensation for failure to cooperate with vocational rehabilitation efforts.

### **LEGAL PRECEDENT**

Section 8104(a) of the Federal Employees' Compensation Act<sup>3</sup> pertains to vocational rehabilitation and provides: The Secretary of Labor may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo vocational rehabilitation. The Secretary shall provide for furnishing the vocational rehabilitation services. Under this section of the Act, the Office has developed procedures which emphasize returning partially disabled employees to suitable employment and determining their wage-earning capacity.<sup>4</sup> If it is determined that the injured employee is prevented from returning to the date-of-injury job, vocational rehabilitation services may be provided to assist in returning the employee to suitable employment.<sup>5</sup>

Section 8113(b) of the Act further provides, "If an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed under section 8104 the Office, after finding that in the absence of such failure the wage-earning capacity of the individual would likely have increased substantially, may reduce prospectively the monetary compensation of the individual in accordance with what would probably have been [her] wage-earning capacity in the absence of the failure, until the individual in good faith complies with the directions of the Office."<sup>6</sup> Office procedures require that prior to reduction of compensation a claimant be notified of the provisions of section 8113(b) and provided an opportunity to either resume participation in vocational rehabilitation or provide reasons for not continuing participation.<sup>7</sup> Under section 8104 of the Act, the employee's failure to willingly cooperate with vocational rehabilitation may

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<sup>3</sup> 5 U.S.C. § 8104(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Vocational Rehabilitation Services*, Chapter 2.813.11(b) (November 1996).

<sup>5</sup> *Id.* The Office's regulations provide: In determining what constitutes "suitable work for a particular disabled employee, [the Office] considers the employee's current physical limitation, whether the work is available within the employee's demonstrated commuting area, the employee's qualifications to perform such work and other relevant factors. 20 C.F.R. § 10.500(b).

<sup>6</sup> 5 U.S.C. § 8113(b).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Vocational Rehabilitation Services*, Chapter 2.813.11(b) November 1996).

form the basis for terminating the rehabilitation program and the reduction of monetary compensation.<sup>8</sup> The Office's implementing regulations state:

"If an employee without good cause fails or refuses to apply for, undergo, participate in or continue to participate in a vocational rehabilitation effort when so directed, [the Office] will act as follows:

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"(b) Where a suitable job has not been identified, because the failure or refusal occurred in the early, but necessary stages of a vocational rehabilitation effort (that is, meetings with the [Office] nurse, interviews, testing, counseling, functional capacity evaluations, and work evaluations), [the Office] cannot determine what would have been the employee's wage-earning capacity.

"(c) Under the circumstance identified in paragraph (b) of this section, in the absence of evidence to the contrary, [the Office] will assume that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity and [the Office] will reduce the employee's monetary compensation accordingly (that is, to zero). The reduction will remain in effect until such time as the employee acts in good faith to comply with the directions of [the Office]."<sup>9</sup>

### ANALYSIS

The Board finds that the Office properly reduced appellant's monetary compensation benefits to zero based on his failure to cooperate with vocational rehabilitation efforts. The vocational counselor attempted to contact appellant by writing him letters on December 2, 2005 and February 16, 2006. She also called him and left messages on December 16, 2005 and January 9, 2006. Appellant never contacted the counselor. By letter dated March 22, 2006, the Office informed him of the consequences of his failure to cooperate with the vocational efforts but appellant did not respond or cooperate with the counselor. As the Office properly followed the procedures and appellant did not cooperate with vocational rehabilitation efforts, the Office properly reduced his compensation.

Although appellant alleged that he no longer lived in Connecticut, but had relocated to South Carolina, the last known address prior to the issuance of the Office's decision was his address in Connecticut. Furthermore, the counselor indicated that she spoke with a family member on January 9, 2006 who indicated that appellant would be back shortly. None of the documents sent to appellant in Connecticut were returned by the U.S. Postal Service as undeliverable. Moreover, appellant did not advise the Office of any change in address to South

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<sup>8</sup> See *Wayne E. Boyd* 49 ECAB 202 (1997) (the Board found that the Office properly reduced the claimant's wage-loss compensation benefits as he failed to cooperate with the early and necessary stages of developing an appropriate training program).

<sup>9</sup> 20 C.F.R. § 10.519.

Carolina. Under the mailbox rule, evidence of a properly addressed letter together with evidence of proper mailing may be used to establish receipt.<sup>10</sup> There is no evidence to rebut the presumption of receipt by appellant of the Office's correspondence.<sup>11</sup> Consequently, his argument that he never received the letters from the vocational counselor or notice from the Office is without merit.

### **CONCLUSION**

The Office properly reduced appellant's monetary compensation to zero for failure to cooperate with vocational rehabilitation efforts.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 27 and April 27, 2006 are affirmed.

Issued: August 21, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>10</sup> See e.g., *Joseph R. Giallanza*, 55 ECAB 186, 191 (2003); *Larry L. Hill*, 42 ECAB 596, 600 (1991).

<sup>11</sup> *Joseph R. Giallanza*, *supra* note 10.